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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 329

THE UNITED STATES OF AMERICA, AS TRUSTEE FOR THE SOLE USE AND BENEFIT OF THE GENERAL POST FUND, PETITIONER

v.

STATE OF OREGON, ACTING BY AND THROUGH THE STATE LAND BOARD, AND PORTLAND TRUST & SAVINGS BANK, ACTING BY AND THROUGH THE STATE LAND BOARD

IN THE MATTER OF THE ESTATE OF ADAM B. WARPOUSKE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Circuit Court of Multnomah County, Oregon (R. 20–21) is unreported. The opinion of the Supreme Court of Oregon (R. 33–49) is reported at 352 P. 2d 539.

JURISDICTION

The judgment of the Supreme Court of Oregon was entered on May 18, 1960 (R. 50). The petition for a writ of certiorari was filed on August 16, 1960, and was granted on November 7, 1960. 364 U.S. 867 (R. 51). The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether 38 U.S.C. (1952 ed.) 17–17j,[1] which vests in the United States (as trustee for the General Post Fund) the personal property of veterans who die intestate and without heirs while receiving care or treatment in the hospital or domiciliary facilities of the Veterans Administration, requires the existence of a common law contract between the veteran and the United States, and thus does not apply to the property of veterans who were incompetent at the time of their admission to the Veterans Administration facility.

2. Whether Congress can constitutionally provide, as a condition to the furnishing of care or treatment in its facilities by the Veterans Administration to an incompetent veteran, that if he dies in such facilities intestate and without heirs, his personal property shall immediately vest in and become the property of the United States for the sole use and benefit of other veterans in providing for religious and recreational programs in these facilities.

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[1] 38 U.S.C. (1952 ed.) 17–17j is now codified as 38 U.S.C. 5220–5228. See fn. 2, *infra*, p. 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The United States Constitution provides in relevant part as follows:

> Fifth Amendment:
>
> No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *.
>
> Tenth Amendment:
>
> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

2. 38 U.S.C. (1952 ed.) 17–17j,[2] the Act of June 25, 1910, 36 Stat. 736, as amended by the Act of December 26, 1941, 55 Stat. 868, provides in pertinent part (as it appeared in the United States Code):

> § 17. *Vesting of undisposed personalty in United States as trustee for General Post Fund.*
>
> Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate,

[2] The provisions of this statute were reenacted without significant change by the Act of June 17, 1957 (Title XIX), 71 Stat. 149. The statute was codified by the Act of Sept. 2, 1958, 72 Stat. 1256, as 38 U.S.C. 5220–5228. Since the veteran here died in 1956, we refer throughout this brief to the statute in force at the time, and to the 1952 Code.

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all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.

The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto.

§17a. *Presumption from death in facility of contract for disposition of property.*

The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter,

but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate.

* * * * *

§ 17c. *Disbursements from Fund; payment of creditors.*

Disbursements from the General Post Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator of Veterans' Affairs for the benefit of members and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital, and this authority is not limited to facilities or hospitals under direct administrative control of the Veterans' Administration: *Provided, however,* That there shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against his estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Veterans' Administration within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any: *And provided further,* That if the decedent's estate be insolvent the distribution to creditors shall be in accordance with the laws of his domicile, and the preferences and priorities prescribed there-

by shall govern, subject to any applicable law of the United States.

§ 17d. *Disposition of remainder of assets; acquisition of assets by the Administrator of Veterans' Affairs.*

The remainder of such assets or their proceeds shall become assets of the United States as trustee for said Post Fund and disposed of in accordance with this subchapter. If there be administration upon the decedent's estate such assets, other than money, upon claim thereof within the time required by law, shall be by the administrator of the estate delivered to the Administrator of Veterans' Affairs or his authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to said Post Fund any such money available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Administrator of Veterans' Affairs upon demand by him or his duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

* * * * * *

§ 17g. *Notice to veterans of law.*

The Administrator of Veterans' Affairs shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval

hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however,* That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed.

* * * * *

STATEMENT

This case involves the competing claims of the United States (as trustee of the General Post Fund) and the State of Oregon to the net estate from the personal property of a deceased veteran of the armed services who died intestate and without heirs in a Veterans Administration hospital after being admitted for care and treatment. The claim of the United States, as trustee of the General Post Fund, is founded on the provisions of 38 U.S.C. 17–17j, *supra,* pp. 3–7. The General Post Fund is used exclusively to provide veterans in facilities of the Veterans Administration with recreational and religious programs and equipment. The State of Oregon's claim is based upon its escheat statute.

The basic facts are not in dispute. Adam B. Warpouske served in the United States Army during World War I. Thereafter, he was awarded a pension by the Veterans Administration for a non-service-connected mental disability (R. 53). He suffered from mental illness during the remainder of his life (R. 22).

Between the years 1930 and 1945, upon his sworn statement that he could not pay the necessary expenses of hospital or domiciliary care (*e.g.*, R. 56), Warpouske was admitted to hospital and domiciliary facilities of the Veterans Administration in various parts of the country on fourteen different occasions (R. 64–65, 70–71). During this period, he spent a total of approximately seven years, without cost to himself, in such facilities (R. 64–65, 70–71). The substantial treatment and care given him during the seven years in these facilities included treatment and care for both physical and mental impairments (R. 64–65).

In connection with his admissions to VA facilities, Warpouske signed a number of application forms in which he agreed that, if he should die intestate and without heirs "while under care" in such a facility, his property would vest in the Veterans Administration for use of the Post Fund.[3] Although some

[3] The form of the agreement was not identical in each application, but a typical agreement contained the following language: "I agree that, in the event of my death while under care, leaving no heirs at law nor next of kin, all personal property owned by me at the time of my death, including money or choses in action held by me and not disposed of by will, whether such property be the proceeds of pension, compensation, retirement pay, or life insurance, or otherwise derived, shall vest in and become the property of the Veterans Administration for the sole use and benefit of the post fund, and that all my personal property shall upon my death, while under care, at once pass to and vest in the Veterans Administration subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within 5 years after my death." (R. 56.)

psychiatric examinations during the periods of institutionalization indicated that he was incompetent, others indicated that he was competent even though suffering from mental illness.[4] In 1945, he was discharged from a Veterans Administration hospital in Wood, Wisconsin, as improved and "competent," although still "unemployable" (R. 72). He was awarded a total and permanent disability pension which continued until his death (R. 52, 73).

On December 31, 1955, while a resident of Multnomah County, Oregon, the veteran was admitted to the Good Samaritan Hospital in Portland, for treatment of a hip fracture and a cerebral hemorrhage (R. 31, 35). Because it appeared that he was without funds, he was transferred on January 5, 1956, to the Multnomah County Hospital for treatment at the expense of the county (R. 7, 31, 35). He remained there until March 1, 1956, when he was transferred to the Veterans Hospital in Portland for further treatment and hospitalization (R. 31, 35).[5] At the

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[4] *E.g.*, R. 67.

[5] The Supreme Court of Oregon characterized this admission to the Veterans Hospital as an "involuntary admission" (R. 36). It is true that Warpouske was mentally incompetent and in a state of coma or semi-coma prior to the transfer (R. 31, 36). On the other hand, the record clearly refutes any suggestion, which might be attributed to the phrase "involuntary admission", that the Veterans Administration removed Warpouske from the County Hospital against his will or that of the Oregon authorities. On the contrary, while, as the court below stated, "[t]here is no record indicating who made the decision for the transfer" (R. 36), the record leaves no doubt that he was transferred and that the Oregon officials were the transferring authority (R. 31–32, 36). Moreover, any inference that the Veterans Administration initiated this transfer pre-

time of his admission to this facility he was incompetent; his condition varied from comatose to semi-comatose (R. 31, 36). On March 9, 1956, the Portland Trust Bank was appointed as his guardian (R. 36). There was no evidence that the guardian protested or objected to his remaining in the Veterans Hospital or to his receiving continued care and treatment there.

Warpouske died in the Veterans Hospital on March 19, 1956, intestate and leaving no known heirs (R. 11, 14, 19). A few days before, it had been discovered that he was the sole heir to the estate of his brother, who had died intestate the previous fall in Wisconsin[6] (R. 4). By reason of this inheritance, Warpouske left a net estate of $13,727.14, of which $971.47 was attributable to unused federal pension funds (R. 23–24). The State of Oregon conceded that the United States was entitled to these latter funds by reason of 38 U.S.C. (1952 ed.) 450(3).

Under the provisions of 38 U.S.C. 17–17j, *supra*, pp. 3–7, the Administrator of Veterans Affairs filed in

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supposes surveillance by the Veterans Administration of all state and local charity hospitals for the purpose of obtaining qualified patients—a presupposition plainly without warrant.

[6] Warpouske's brother, named Steve Warpechowski, also suffered from serious mental disabilities prior to his death in a V.A. hospital in Wisconsin. Apparently because of their similar medical histories, a hospital record pertaining to Warpechowski's history was accidentally included in the record in this case, and stipulated by the parties and relied on by the court below as a record of Adam Warpouske. That record was designated Exhibit 3 (R. 53-54) and clearly refers to Steve Warpechowski (R. 54). Its erroneous inclusion, however, has no bearing on the basic facts in this case.

the Oregon probate court a "Claim for Personal Property in Estate" on behalf of the United States, as trustee of the General Post Fund (R. 18–19). The Oregon State Land Board filed a petition for escheat on behalf of the State of Oregon (R. 11–13). After trial, the Oregon probate court (the Circuit Court for Multnomah County, Department of Probate) found that the deceased was not mentally competent to understand the consequences of his acceptance of hospitalization in the Veterans Administration hospital or to enter into any contract respecting his hospitalization (R. 23). For that reason, and because it viewed 38 U.S.C. 17–17j as requiring a common-law contract, it held (R. 23):

> * * * the provisions of § 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death.

Consequently, except for that portion of the estate attributable to federal pensions, the court ordered the escheat of the net estate to Oregon.

On appeal, the Supreme Court of Oregon affirmed. The court expressed the view that 38 U.S.C. 17–17j would be in violation of the Fifth and Tenth Amendments to the United States Constitution if applied to the estate of a veteran who had no capacity to contract when he entered a Veterans Administration hospital. Primarily because of this view, the court concluded that the statute should be interpreted as requiring a common-law contract and therefore as inapplicable to a veteran incompetent at the time of

admission to the Veterans Administration hospital. The court also pointed to this Court's decision in *United States* v. *Stevens*, 302 U.S. 623, holding that, where the veteran executes a contract on admission to the Veterans Administration hospital, his property passes to the General Post Fund pursuant to the terms of his agreement, upon his death intestate and without known heirs (R. 33–49).

SUMMARY OF ARGUMENT

I

The ruling of the Oregon Supreme Court that 38 U.S.C. 17–17j, *supra*, pp. 3–7, is predicated on the existence of a common law contract between the government and the veteran, and consequently is not operative with respect to the personal estate of a veteran, like Warpouske here, admitted incompetent into a Veterans Administration hospital, is refuted by the terms of the statute, its history, the consistent administrative practice, and the existing case law.

A. In explicit terms, 38 U.S.C. 17 states, without qualification, that "whenever *any veteran* * * * shall die" while a patient at a V.A. facility, intestate and without heirs, his "personal property * * * *shall immediately vest* in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund * * *" (emphasis added). This broad vesting clause, on which the claim of the United States is based, clearly establishes that the statute is automatic or self-executing in operation in the case of all veterans, competent and incompetent alike, who are admitted to Veterans Administration hospitals

and homes, and die there without leaving heirs or a will.

The remaining provisions of 38 U.S.C. 17–17j confirm the congressional intent reflected in the opening vesting clause. While the second paragraph of 38 U.S.C. 17 contains the terms "acceptance" and "assignment", these words plainly were not used in a context implying an actual consensual agreement. Instead, the paragraph provides that "*acceptance of care or treatment* by *any veteran* * * * *shall constitute an acceptance* of the provisions and conditions of this subchapter and *have the effect* of an assignment, effective at * * * death, of such assets * * *" (emphasis added). Similarly, 38 U.S.C. 17a, providing that the death of a veteran, who has been furnished care or treatment in a V.A. facility gives rise to a "*conclusive presumption* of a valid contract" (emphasis added) for disposition of his personalty in accordance with the vesting provision, is inconsistent with the view that Congress intended to require an actual contract between the veteran patient and the government. Nor do the notice requirements of 38 U.S.C. 17g detract from the force and effect of the initial vesting provision. Section 17g merely directs the Administrator to give notice of the statutory provisions, either on the application form or by posting, and does not require actual consent or knowledge on the veteran's part.

B. Congress was aware in 1941 when 38 U.S.C. 17–17j was enacted, through the annual reports of the Administrator of Veterans' Affairs, that for years almost 60% of the patient population of V.A. facili-

ties consisted of veterans with neuropsychiatric disabilities, thousands of whom were presumably admitted while incompetent. The application of the vesting provision (38 U.S.C. 17) to *"any veteran"* dying while a patient, in the light of congressional awareness of these significant statistics, indicates the purpose of Congress to obtain, for the benefit of those veterans remaining in V.A. facilities through the General Post Fund, the personal estates of both competent and incompetent admittees leaving no heirs and no will. That intention is further reflected by the fact that the 1941 Act eliminated certain formalities, looking toward an actual consensual understanding, required in the predecessor statute of 1910.

C. The consistent interpretation of the statute by the Veterans Administration since 1941, as well as the applicable case law, fully support the self-executing interpretation we advance. Other state court decisions involving the estate of a veteran admitted incompetent, like Warpouske, have held the statute to be self-executing and not as requiring a common law contract. There are no decisions to the contrary. Reliance by the court below and respondents on this Court's decision in *United States* v. *Stevens,* 302 U.S. 623, and a line of lower court decisions following *Stevens,* is unwarranted. *Stevens,* in contrast to this case, involved the admission to a V.A. facility of a *competent* veteran who, by virtue of his application, executed an actual contract for disposition of his property on death. In holding that the personal estate in *Stevens* passed to the United States under this contract, the Court never reached the issue posed here.

II

There is no merit to the view expressed by the Oregon Supreme Court that, if interpreted as self-executing and thus applicable to the personal property in the estate of Warpouske, 38 U.S.C. 17–17j would violate the Constitution of the United States.

A. Primary emphasis was placed by the state court on the Tenth Amendment. However, as firmly established in numerous decisions of this Court, federal legislation does not violate the Tenth Amendment if it is enacted pursuant to a power granted the federal government under the Constitution to accomplish a legitimate purpose, and if the legislation adopts means which are both necessary and appropriate to the permitted purpose and not prohibited by any other part of the Constitution. E.g., *McCulloch* v. *Maryland,* 4 Wheat. 316; *Case* v. *Bowles,* 327 U.S. 92.

38 U.S.C. 17–17j plainly comes within these criteria. The authority to grant benefits to veterans of our armed forces, including hospitalization and domiciliary care, stems from the delegated power to provide for the common defense and to raise and maintain an army and navy (Art. I, Section 8). This authority to provide benefits carries with it, of course, the power to legislate on the entire matter of such benefits, including the imposition of terms and conditions. Similarly, there can be no doubt that the purpose to which the statute in question is directed is a legitimate purpose within the delegated power. That purpose is to provide, through the General Post Fund, for recreational and religious equipment and activities in V.A. hospitals and domiciliaries.

Nor can there be any doubt that the means adopted—the vesting mechanism of the Act—are necessary and proper, and reasonably related, to the permitted end of aiding the general comfort and welfare of the veterans in V.A. facilities. The congressional method is most generous to the deceased veterans in that nothing is taken from them while alive and nothing from their heirs or devisees upon their death; the veteran's personalty vests in the United States for the Post Fund only upon his death without heirs or will. This condition on the extension of gratuitous hospital or domiciliary care and treatment to the veteran is bottomed on the special relationship existing between the veteran and the government. The courts, in considering a great mass of federal legislation dealing with veterans, have always considered that this special relationship gives Congress broad discretion in imposing terms and conditions on the benefits it extends to these men. Moreover, it is altogether fair and reasonable that the estates, if any, of men like Warpouske who because of indigence have qualified for free V.A. care and treatment and who have had the advantage of comforts provided by Post Fund expenditures should be utilized for the benefit of veterans similarly situated. In this connection, it is significant that a number of states, as an exception to their general escheat laws, employ essentially the same vesting procedure as this federal Act in connection with the estates of heirless veterans, dying intestate, who are hospitalized and housed in state-maintained institutions.

Finally, since 38 U.S.C. 17–17j is a reasonable exercise of federal power, as it clearly is, it makes no difference that it affects the operation of the state escheat statute in this and similar instances. Since the federal law is supreme under the Constitution, it is no objection that the exercise of the federal power encroaches on a state power or is attended by certain incidents similar to those attending the exercise of a state power. *E.g., Case* v. *Bowles*, 327 U.S. 92; *United States* v. *Darby*, 312 U.S. 100.

B. In addition to its concern over the Tenth Amendment, the court below expressed its belief that 38 U.S.C. 17–17j, as interpreted by the government, would violate the Fifth Amendment. This view is plainly without merit, both with respect to the state and to the veteran. The Oregon court did not suggest that a state's right of escheat is within the ambit of that Amendment, and in any event it is doubtful that a state can be termed a "person" within the Amendment. Moreover, the general right of succession to property is not protected by the Constitution.

Nor does the statute improperly interfere with the veteran's rights under the Fifth Amendment since nothing is taken from him, or even from any heir or devisee. Vesting under 38 U.S.C. 17–17j occurs only when all individual property rights have expired, and in any case is, as we have pointed out, a reasonable exercise of Congressional power for a legitimate end.

ARGUMENT

I

UNDER 38 U.S.C. 17–17j, THE PERSONAL PROPERTY OF ALL VETERANS, INCLUDING THOSE INCOMPETENT UPON ADMISSION, WHO DIE INTESTATE AND WITHOUT HEIRS WHILE PATIENTS IN VETERANS ADMINISTRATION FACILITIES, VESTS IN THE UNITED STATES FOR USE OF THE GENERAL POST FUND

Contrary to the ruling below, the Congressional enactment vesting in the United States (for the use of the General Post Fund) personal property left by veterans dying intestate and heirless in a Veterans Administration facility does not presuppose a consensual arrangement between the veteran and the government, so that the statute can have no effect where the veteran is incompetent to contract. Rather, Congress provided a self-executing transfer of such property to the United States on the death of the veteran, regardless of his actual consent to the arrangement. This is made plain by the terms of the legislation taken as a whole, by its history, and by the previous judicial decisions and administrative practice.

A. THE STATUTORY PROVISIONS

1. We submit that, whether examined separately or together, the provisions of 38 U.S.C. 17–17j, *supra*, pp. 3–7, apply to all veterans who die intestate and without heirs while patients in a Veterans Administration facility. Congress has decreed in 38 U.S.C. 17–17j that, no matter whether he is competent or incompetent at the time of admission, whenever a veteran dies in a V.A. facility, without heirs and without

leaving a will, and after receiving free care and treatment,[1] his personal estate will vest in the United States for the sole use and benefit of the General Post Fund. The only relevant inquiry is whether the veteran died intestate and without heirs while admitted as a patient. Had Congress desired to predicate operation of the statute on the existence of an actual common law contract and thus, of necessity, to differentiate between competent and incompetent admittees, as the court below ruled, it could and would have done so in unmistakable terms. Instead, Congress provided for an automatic vesting of the property in the United States on the death of the intestate-and-heirless veteran.

In reaching its conclusion as to the effect of the statute, the court below did not give any consideration to the first paragraph of 38 U.S.C. 17, which states without qualification that "whenever any *veteran* * * * shall die" while a patient at a facility of the Veterans Administration intestate and without heirs, his "personal property * * * *shall immediately vest* in and become the property of the United States as trustee for the sole use and benefit of the General Post

[1] Under the provisions of 38 U.S.C. (1952 ed.) 706, Congress has provided free hospitalization and domiciliary care for all veterans with service-connected disabilities, diseases, or injuries, and free hospitalization and domililiary care, to the extent of available space, for all veterans with non-service-connected impairments who are unable to bear the necessary expenses. Warpouske's many periods of V.A. domiciliary and hospital institutionalization, including his final care and treatment at the Veterans Hospital in Oregon, were the result of non-service-connected mental and physical impairments.

Fund * * * (emphasis added). This is a clear statement that the operation of the statute, under the prescribed conditions, is automatic or self-executing with respect to each and every veteran who enters a V.A. facility as a patient; the vesting of the property does not depend on the existence of an actual contract between the veteran and the Veterans Administration. These prescribed conditions underlying the statute's operation were met here—the death of Warpouske, while a patient receiving care and treatment in a Veterans Hospital, intestate and without any known heirs.

To reach the contrary conclusion that the statute is not self-executing, the court below relies on the remaining provisions of 38 U.S.C. 17–17j as demonstrating that Congress intended an actual common law contract as a prerequisite to the statute's operation. Properly read, these provisions reflect no such intent.

The second paragraph of 38 U.S.C. 17 does go on to stipulate that the vesting provisions are "conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital" and that the "*acceptance of care or treatment* by *any veteran* admitted as such * * * *shall constitute an acceptance* of the provisions and conditions of this subchapter and *have the effect* of an assignment, effective at his death, of such assets * * *" (emphasis added). The court below selected and underscored the words "acceptance" and "assignment" (R. 37). However, these provisions, examined in their entirety, do not establish the prerequisites of a common law contract; they merely establish a particular event—the acceptance of care and treatment in a V.A. hospital or

domiciliary—as *constituting* an acceptance of the vesting provision and as having *the effect* of an assignment, *i.e.*, being the equivalent of an assignment. Self-executing legislation providing that certain conditions resulting in a transfer of property are tantamount to the existence of a contract for that purpose is not the same thing as legislation requiring an actual contract to accomplish the transfer. Moreover, the opening sentence of the paragraph ["[t]he foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital."] shows that Congress did not intend the knowing consensual "acceptance" of care to be a necessary prerequisite to the vesting provisions of the prior paragraph of Section 17.

The next section, 38 U.S.C. 17a, does not detract from the force and effect of Section 17 but, on the contrary, affords additional proof that no actual contract was envisaged as a condition precedent to the operative effect of the statute. It provides that the death of a veteran, while being furnished care or treatment in a Veterans Administration facility, gives rise to a "*conclusive presumption* of a valid contract" for the disposition of his property in accordance with the statute (emphasis added). This provision plainly reflects the self-executing design of the statute. By making the presumption conclusive, rather than rebuttable, Congress was reiterating that the event of operative significance was the death of the veteran while accepting care and treatment as a patient in a V.A. facility. To provide for a conclusive presumption "is to make a rule of substantive law". 9 Wigmore, *Evidence* (1940), § 2492, p. 292. Accordingly,

although it is phrased in spurious contractual terms, Section 17a is wholly inconsistent with the view of the court below that Congress intended to require an actual contract—a consensual arrangement—between the veteran and the Government.

Finally, 38 U.S.C. 17g lends no support to the refusal of the court below to give effect to the vesting provisions of Section 17. Section 17g directs the Administrator of Veterans Affairs to give notice of the statutory provisions on the application form for admission to V.A. institutions. This requirement, however, may be satisfied by the posting of the terms of 38 U.S.C. 17–17j in a prominent place in a hospital or domiciliary.[8] Actual notice of the terms of the statute is not made a prerequisite to the statute's operation. More important, whether notice is accomplished by means of the application form or posting, there is no requirement that the government obtain actual consent to the vesting provisions of the statute from each admittee.[9]

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[8] Notice (either on the form supplied to those competent or physically able to sign it, or by posting) was obviously deemed desirable to inform the admittee, particularly the veteran without near relations, that he might still dispose of any personalty he might possess by will or gift, rather than allow it to pass to the General Post Fund.

[9] Form 10–P–10, which is currently used by V.A. for application purposes and was the form in use at the time of Warpouske's admission to the V.A. hospital in Oregon, contained a section providing the following acknowledgment:

"I acknowledge notice of the effect of the law mentioned on the reverse side hereof."

On the reverse side of the application the following notice appeared:

"Note.—The law provides that upon the death of any veteran receiving care or treatment by the Veterans Administration in

B. THE LEGISLATIVE HISTORY

1. Although the Senate and House Reports [10] on the Act of December 26, 1941, 38 U.S.C. 17–17j, *supra*, shed little light on the issue here, there are other significant elements in the legislative history which tend to support our interpretation of the Act. At the time 38 U.S.C. 17–17j was passed in 1941 and for years prior thereto, a substantial number of veterans admitted to V.A. facilities for care and treatment were admitted because of mental diseases.[11] Congress was

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any institution leaving no widow (widower), next of kin or heir entitled to inherit, all personal property, including money or balances in bank, and all claims and choses in action, owned by such veteran, and not disposed of by will or otherwise, will become the property of the United States as trustee for the Post Fund." See, *e.g.*, *Estate of Turner*, 171 Cal. App. 2d 591, 593, 341, P. 2d 376, 378.

The record does not show that Warpouske signed any such form on his transfer to the Veterans Hospital in Oregon. He was constantly in a state of coma or semi-coma throughout his last hospitalization in both the Oregon hospitals and the Veterans Hospital (R. 36).

The application form in use under the 1910 Act, on the other hand, contained a provision requiring the express agreement of the applicant to the statutory terms. See footnote 15, *infra*, p. 25. See also, *United States* v. *Stevens*, 302 U.S. 623, 625.

[10] Sen. Rept. No. 900, H. Rept. No. 609, 77th Cong., 1st Sess. No record of a hearing in either House has been found. The bill was drafted by the Veterans Administration and was approved and passed without modification. 87 Cong. Rec. 5850–5851, 9771.

[11] The Annual Reports of the Administrator of Veterans' Affairs show that this trend has continued to the present time. Moreover, we have been advised by the Veterans Administration that, as of April 30, 1960, it had a total of 105,404 incompetent veterans on its rolls, approximately 52,300 of whom were under treatment in 39 V.A. neuropsychiatric hospitals, and

not unaware of this fact since each Annual Report of the Administrator of Veterans' Affairs to Congress indicated the problems involved in the care and treatment of so large a portion of the Veterans Administration's patient population. Indeed, the Reports between 1936 and 1941, the five-year period preceding passage of the new legislation, show that the number of veterans receiving care and treatment for neuropsychiatric diseases in Veterans Hospitals, at the end of each of these years, was never less than 56.92% of the total patient population and that this percentage increased to 59.14% in 1941.[12] In addition, approximately one-third to one-half of the veterans receiving care and treatment during these years in domiciliaries were mental patients.[13] Finally, the statistics for these years indicate that thousands of veterans were being admitted each year because of neuropsychiatric impairments.[14]

These statistics, brought to Congress' attention year after year, illustrate as well as anything that, when Congress provided in 1941 for the immediate vesting of personal property of *"any veteran"* dying in the specified circumstances, it was referring to the total patient population of V.A. facilities, including the 55–60% mentally impaired veterans, many of whom

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several additional thousand of whom were under treatment in other types of V.A. hospitals and institutions. Although there are no available statistics, it is believed that a very high percentage of the mentally ill patients were incompetent at the time of their admission to the V.A. facility.

[12] See the Annual Reports for 1936, p. 6; 1937, p. 5; 1938, p. 9; 1939, p. 7; 1940, p. 7; 1941, p. 8.

[13] See the Annual Reports for 1936, p. 8; 1937, p. 8; 1938, p. 12; 1939, p. 10; 1940, p. 10; 1941, p. 10.

[14] *E.g.*, Annual Report, 1940, p. 10.

were presumably incompetent (like Warpouske) and admitted as such. Had Congress desired to exclude from the operative effect of the statute so large a number of veterans by imposing the requirement of a common law contract, it would have done so in the clearest of terms. The failure to do so, and, instead, the application of that statute's reach to "*any* veteran", in the light of these informative statistics, can hardly be termed an unknowing or inadvertent action.

2. The predecessor to the 1941 Act, 38 U.S.C. 17–17j, was the Sundry Appropriations Act of June 25, 1910, 36 Stat. 703, 736.[18] That Act provided that the "ap-

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[18] That statute (as amended, 24 U.S.C. (1940 ed.) 136) provided:

"136. *Disposition of personal property of deceased members.*

"The application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Administrator of Veterans' Affairs that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Administrator for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Administrator, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Administrator, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Administrator of Veterans' Affairs is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant, and as to contain the consent of the applicant to accept membership upon the conditions provided in this section."

plication of any person for membership" in the National Home for Disabled Volunteer Soldiers [16] and the "admission of the applicant thereunder shall be and constitute a valid and binding contract". The managers of the Home were directed to change the form of application to give reasonable notice and "to contain the consent of the applicant" of the conditions imposed by the statute. This provision was merely a directive, and not a prerequisite to the validity of the contract. The only requirements for the statutory contract were "the application" and "the admission of the applicant thereunder". Even under the 1910 Act, therefore, the competence of the veteran at the time he was admitted (on his application) was probably irrelevant and the Act applied alike to competent and incompetent veterans.

In any case, the 1910 Act was amended by the Act of December 26, 1941, 55 Stat. 868, and became 38 U.S.C. 17–17j. The primary objective of the amendment was to enlarge the coverage of the 1910 Act to include veterans who died while receiving hospital treatment, as well as those who were receiving domiciliary care. H. Rept. No. 609, 77th Cong., 1st Sess.; Sen. Rept. No. 900, 77th Cong., 1st Sess. The earlier

[16] The National Home for Disabled Volunteer Soldiers was established by legislation in 1866. Although the branches of the Home scattered throughout the country were primarily domiciliary, they offered incidental hospital and medical care. In 1930, the Home for Disabled Volunteer Soldiers and the hospitals previously administered by the United States Veterans' Bureau were consolidated under the control of the Veterans Administration. See the preface to 38 United States Code Annotated, Brief History of Legislation Pertaining to Veterans' Benefits, pp. 28–29.

Act, however, was completely recast, enlarged, and made more detailed. Of particular significance is the fact that Congress dispensed with the prior formal requirements of an application and admission thereunder, and omitted any attempt to obtain the consent of the individual veteran. Thus, while the original statute was cast in the terms of certain formalities, the statute as modified was self-executing and required no agreement, and none of the other usual incidents of a contract. This history, we submit, confirms the intent of Congress that the 1941 Act should apply to both competent and incompetent veterans who die while receiving care or treatment at a V.A. installation.

3. We must recognize, of course, that Congress used language sounding in contract in the 1941 Act, as it had in the 1910 statute. But, as we have shown, Congress plainly never went so far as to require the existence of a common law contract, or any consensual arrangement, before the provisions of the 1941 Act could come into operation. On the contrary, Congress was very careful, while employing contractual-type terms, to impose the vesting of heirless intestate property as an automatic rule of law, not dependent upon the veteran's consent in any form. We surmise that this partial lack of full harmony between the language in which Congress cast the statute, and the substantive rule of law it was establishing, is attributable simply to some doubt on the part of some legislators that Congress could validly take such action without the implied agreement of the veteran.

They did desire to take that action nevertheless, but their uncertainty as to the power of Congress to lay down a rule *in invitum* led them to the embellishments of language sounding in contract. This is, of course, not uncommon with legislatures. Perhaps the most flourishing examples, at present, are the state statutes providing that use by an autoist of a state's highways shall be deemed consent to service of process on him through service on a state official, and the legislation dealing with "consent" to suit by foreign corporations doing business within a state. In the present case, as we show below (*infra*, pp. 33–50), Congress need have had no fears at all that its action would violate the Constitution, but Congress chose in 1941 to be cautious in phraseology. Its conservatism on this score should not be used to obliterate the clear rule it declared, and desired to establish.

It is true that, in a brief colloquy on the floor of the House, Congressman Rankin, the Chairman of the Committee on World War Veterans' Legislation, expressed an opinion that the proposed legislation required the agreement of the veteran as to its terms and therefore did not apply to veterans who were insane or physically unable to agree. 87 Cong. Rec. 5203. No action was taken by the House following this discussion (87 Cong. Rec. 5203–5204), and there is no indication anywhere in the legislative history that any other member of Congress subscribed this view. In the light of the terms of Sections 17–17j (which we have discussed *supra*, pp. 18–22) and of the fact that the bill was drafted in the Veterans Administration (fn. 10, *supra*, p. 23), which has consistently

interpreted it in the way we suggest (fn. 18, *infra*), we do not think that this isolated and unsupported opinion of Mr. Rankin can be regarded as reflecting the opinion of Congress, even though he was the chairman of the committee. The remark is outweighed by all the other pertinent factors in the legislative history of the statute.

C. THE CASE LAW AND ADMINISTRATIVE PRACTICES

In reaching its interpretation of 38 U.S.C. 17–17j, the Oregon Supreme Court attempted to distinguish a line of state court decisions which the government contended held that the statute was self-executing, and, further, sought to derive support from another line of federal and state court decisions adopting the holding of this Court in *United States* v. *Stevens*, 302 U.S. 623. In our view, the suggested differentiation of the state rulings are unsound, and the decision in *Stevens* is plainly distinguishable.

1. The ruling of the Oregon court holding the statute inapplicable to incompetent veterans is in conflict with the other state court decisions on this issue,[17] as well as with the consistent administrative interpretation of the statute.[18] The courts of last resort in both Pennsylvania and North Dakota have held that 38 U.S.C. 17–17j covers the personality of a veteran,

[17] There are no federal court decisions involving incompetent veterans. None of the cases cited for support by the Oregon court concerned incompetent veterans.

[18] We have been advised by the Veterans Administration that since 1941 the statute has been administratively interpreted as applying to competent and incompetent veterans alike (Pet. App. 44–45). This interpretation, of course, is entitled to great weight.

admitted as incompetent to a V.A. facility, who died while a patient there, intestate and without heirs. *In re Estate of Skriziszouski,* 382 Pa. 634, 116 A. 2d 841; *In re Gonsky's Estate,* 79 N.D. 123, 55 N.W. 2d 60. The decision below is also in conflict with a lower court decision in New York. *In re Bonner's Estate,* 192 Misc. 753, 80 N.Y.S. 2d 122 (Sur. Ct., Queens Co.).

In *Skriziszouski,* the Supreme Court of Pennsylvania applied 38 U.S.C. 17–17j to the entire estate of a veteran who was incompetent when he entered a V.A. institution. While the court below endeavored to distinguish the case on the ground that most of the estate was derived from federal pension benefits, the holding of the Pennsylvania court covers non-federal as well as federal funds, and thus does not justify the distinction. Moreover, a lower Pennsylvania court has expressly held that *Skriziszouski* controls, regardless of the proportion of the incompetent veteran's estate which can be traced to federal pension moneys. *Estate of Maguire,* 13 D. and C. 2d 247, 7 Fiduc. Rep. 701 (Orphans Ct., Philadelphia).

A similar result was reached by the Supreme Court of North Dakota in *In re Gonsky's Estate.* The Oregon Supreme Court also distinguished *Gonsky* on the ground that the estate in that case was derived from federal pensions and therefore became the property of the United States under 38 U.S.C. (1952 ed.) 450(3). The attempted distinction, however, cannot be squared with the express language of the *Gonsky* opinion that "the facts in this case clearly bring it within the provisions of Sections 17, 17a, 17f, Title

38 USCA", the lengthy discussion of 38 U.S.C. 17–17j as applied to the facts of the case, and, finally, the court's holding that the property passed to the United States under 38 U.S.C. 17–17j "for the sole use and benefit of the General Post Fund."[19] 79 N. Dak., at 130, 136.

In *Bonner's, supra,* the New York court held the statute applicable to the entire estate of a veteran admitted while incompetent to a V.A. facility. The estate included substantial amounts not shown to have been derived from federal pension benefits. The court ruled that, under the 1941 Act, there was no requirement of any actual contract or agreement between the veteran and the Government.

2. Nothing in *United States* v. *Stevens,* 302 U.S. 623, calls for the result reached below. In that case, a competent veteran entered into an express contract for the disposition of his property, pursuant to the Sundry Appropriations Act of June 25, 1910, *supra,* pp. 25–26, the predecessor of 38 U.S.C. 17–17j.[20] This Court found that the situation presented all the requirements of a valid common law contract, and that the veteran's property passed to the government,

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[19] Property passing to the United States by virtue of 38 U.S.C. (1952 ed.) 450(3) is not used for the General Post Fund but is credited to current appropriations for payment of compensation, insurance, or pensions.

[20] He did this by signing the application form which, under the 1910 Act, provided for his express consent to leave his estate in accordance with the provisions of that Act.

by virtue of the contract, upon his death in a V.A. facility, intestate and without heirs.[21]

Not faced with the admission of an incompetent veteran or one physically unable to contract, the Court in *Stevens* obviously did not have to, nor did it, reach any questions concerning the effect of the federal statute in the circumstances presented here. Its observation that the government's claim, in the circumstances before it, was predicated on contract in no way suggests, as the court below and respondent infer, that the government was contending or that the Court held that in circumstances such as those in this case operation of the statute would be dependent on the existence of a valid common law agreement.

The *Stevens* decision has been followed in a number of state and federal cases, on several of which the court below relied (R. 37–38). *E.g.*, *Estate of Turner*, 171 Cal. App. 2d 591, 341 P. 2d 376; *In re estate of Witte*, 174 Kan. 360, 255 P. 2d 1039; *Mauck v. United States*, 94 F. 2d 745 (C.A. 9); *United States v. Security-First Nat. Bank of Los Angeles*, 130 F. Supp. 521 (S.D. Calif.); *United States v. Peoples National Bank of Chicago*, 121 F. Supp. 331 (N.D. Ill.); *United States v. Gallagher*, 97 F. Supp. 1014 (S.D. Calif.).[22] These cases, involving either the

[21] The Court noted that the contract was not "inequitable, unjust or not upon valuable consideration." 302 U.S. at 628. It also observed generally that "Homes for the aged, needy, or infirm, in return for the benefits bestowed by them, generally receive some benefit from any property or estates of their members". *Id.* at 627.

[22] See, also, *United States v. State of California*, 143 F. Supp. 957 (N.D. Calif.); *United States v. Mid City Nat. Bank of Chicago*, 121 F. Supp. 402 (N.D. Ill.); *United States v. Brown*, 110 F. Supp. 370 (S.D. Calif.).

1910 or the 1941 Acts, all concern, like *Stevens,* a competent veteran executing a contract by signing an application for admission and thus, like *Stevens,* do not reach the issue of this case. The language in those opinions must be read in the light of the significant fact that the veterans in the cases before the courts were competent to, and did contract, with the United States.

II

38 U.S.C. 17–17j, WHICH PROVIDES FOR THE VESTING OF ANY VETERAN'S ESTATE IN THE GOVERNMENT FOR USE OF THE POST FUND IF HE DIES INTESTATE AND WITHOUT HEIRS WHILE A PATIENT IN A V.A. FACILITY, DOES NOT VIOLATE THE FEDERAL CONSTITUTION

A. THE TENTH AMENDMENT

As previously noted, the Oregon court's view that the operation of 38 U.S.C. 17–17j is dependent on the existence of a common law contract was heavily influenced by its belief that, if held to be self-executing, the statute would violate the Tenth Amendment to the Constitution of the United States. This controlling assumption is without merit.

1. It is now firmly established that a federal statute does not violate the Tenth Amendment if it is enacted pursuant to a power granted the federal government, under the Constitution, to accomplish a legitimate purpose, and if it adopts means necessary and appropriate to the permitted purpose, which are not prohibited by any other part of the Constitution. *E.g., McCulloch* v. *Maryland,* 4 Wheat. 316; *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 324–325; *Kentucky*

Whip & Collar Co. v. *I.C.R. Co.*, 299 U.S. 334, 352; *United States* v. *Darby*, 312 U.S. 100, 124; *Oklahoma* v. *Atkinson Co.*, 313 U.S. 508, 534; *Fernandez* v. *Wiener*, 326 U.S. 340, 362; *Case* v. *Bowles*, 327 U.S. 92, 101–102; *Oklahoma* v. *Civil Service Comm'n*, 330 U.S. 127, 142–144. As this Court stated in *Case* v. *Bowles*, *supra* (327 U.S. at 102):

> Since the decision in *McCulloch* v. *Maryland*, 4 Wheat. 316, 420, it has seldom if ever been doubted that Congress has power in order to attain a legitimate end—that is, to accomplish the full purpose of a granted authority—to use all appropriate means plainly adapted to that end, unless inconsistent with other parts of the Constitution. And we have said, that the Tenth Amendment "does not operate as a limitation upon the powers, express or implied, delegated to the national government."

Moreover, if Congress enacts legislation authorized under its granted powers and the state has a conflicting law, which would be valid but for the federal act, the Supremacy Clause of Article VI establishes the supremacy of the federal enactment. *E.g.*, *Case* v. *Bowles*, *supra*, at 102–103; *Oklahoma* v. *Atkinson Co.*, 313 U.S. 508, 534–535. Accordingly, the question presented here, as in all cases in which federal legislation is challenged on the basis of the Tenth Amendment, is not whether the means utilized by Congress to achieve a permitted end encroach upon an area of state power but whether the means are necessary and appropriate to the end sought and not in derogation of any other provision of the Constitution. If

that question is answered affirmatively, there is no Tenth Amendment violation.

2. There can be no doubt of the constitutional power of Congress to extend to veterans of the nation's armed services such benefits as hospitalization and institutionalization, and to attach proper terms and conditions to those benefits. The delegated power to provide for the common defense and to raise and maintain an army and navy (Art I, Section 8) confers authority upon Congress to provide pensions and other benefits, as a reward to those who have rendered faithful service in the armed forces of the United States and as an inducement for future service by others. *United States* v. *Hall*, 98 U.S. 343; *Royce, Inc.* v. *United States*, 126 F. Supp. 196 (Ct. Cls.); see also *Abbot* v. *Morgenthau*, 93 F. 2d 242 (C.A. D.C.), certiorari denied, 303 U.S. 638. And the power to grant pensions and other gratuitous benefits such as hospitalization carries with it the power to legislate on the whole matter of such benefits, including the imposition of various terms and conditions. See *Hines* v. *Lowrey*, 305 U.S. 85; *Frisbie* v. *United States*, 157 U.S. 160; *Abbot* v. *Morgenthau, supra; Coakley* v. *Attorney General*, 318 Mass. 508, 62 N.E. 2d 659. Consequently, if necessary and appropriate to a legitimate purpose, the means adopted by Congress in 38 U.S.C. 17–17j clearly fall within the

general constitutional authority to legislate under the military and defense powers.[23]

Similarly, the purpose to which the legislation is directed is plainly legitimate. That end is to obtain funds for the General Post Fund by means of which the government may provide for and improve the recreation and religious equipment and facilities of V.A. hospitals and domiciliaries, in which veterans are gratuitously cared for and treated—in the case of men like Warpouske, for a good part of their lives. The personalty vesting in the government under 38 U.S.C. 17–17j is solely for the benefit and use of the Post Fund, and no part of it is covered into the Treasury for general expenditures.[24]

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[23] The history of legislation in this country concerning the care of men injured while serving in the armed forces dates back to the Revolutionary War. After that war, certain of the states made provision for the dressing of the wounds of veterans, but no federal provision was made until after the establishment in 1811 of the United States Naval Home, Philadelphia, Pennsylvania. 2 Stat. 650. The federal policy after the Revolutionary War and prior to the War of 1812 was apparently to compensate or pension veterans for their disabilities rather than to administer medical or domiciliary care. History of the Medical and Domiciliary Care of Veterans, *The Military Surgeon*, Vol. 76, No. 3 (1935). See also, the preface to Title 38, United States Code Annotated, Brief History of Legislation Pertaining to Veterans' Benefits, pp. 6–31.

[24] Some of the items in hospitals and domiciliaries covered by expenditures from the General Post Fund include, *inter alia*, telephone calls for indigent patients, leasing of bowling alleys, swimming pools and golf courses, rental of transportation for off-station amusements, admissions to such amusements, hiring of entertainers and sports officials, small games and puzzles, contest prizes, holiday decorations, playroom furnishings, reading material, song and prayer books and other articles used in

3. The remaining question is whether Congress, in order to accomplish this legitimate purpose, has chosen or adopted, in the vesting provisions of 38 U.S.C. 17–17j, a means necessary and appropriate to the permitted end. The terms necessary and appropriate or, as used in Art. I, Section 8, "necessary and proper", have been given a very broad scope by this Court. In *McCulloch* v. *Maryland, supra,* Chief Justice Marshall explained that the terms were not used in the restrictive sense, meaning the most direct or simple means, but rather were flexible terms which were really synonymous with such expressions as "convenient, or useful, * * *". 4 Wheat. at 413. Many other expressions have been applied by the Court in expressing the real sense of necessary and appropriate, such as "plainly adapted" (*e.g., McCulloch, supra,* at 421), "conducive" (*Legal Tender Case,* 110 U.S. 421, 440), "eligible" (*Logan* v. *United States,* 144 U.S. 263, 283), and all means which "most advantageously effect" the permitted end (*Legal Tender Case, supra,* at 440). Another common paraphrasing of the necessary and proper clause has been whether the means employed in the federal statute are "reasonably related" or "adapted" to the permitted end. *Perez* v. *Brownell,* 356 U.S. 44, 58; *United States* v. *Darby,* 312 U.S. 100, 121.

(*a*). In determining whether the vesting mechanism utilized in 38 U.S.C. 17–17j is necessary and appropriate, or reasonably related, to the end of raising

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personal devotions, and altar and sanctuary appointments. V.A. Manual MP–4, Part 5 (Department of Medicine and Surgery Supplement, Sept. 26, 1956).

funds for specific benefits in V.A. institutions, it is important, in the first instance, to stress the significance of the relationship between the veteran and the government. It is this relationship which, when placed in the context of the receipt by a veteran of free care and treatment at V.A. hospitals and homes, constitutes the essential nexus between the purpose of, and the means employed by this statute. The relationship between the veteran and the government has been, of course, the basis for a great mass of special legislation since the first days of the Republic.[25] All sorts of pensions and other gratuities, including health and insurance benefits, bonuses, educational benefits, reemployment rights and financial advantages have been conferred by the country on the men who once bore arms on its behalf. As noted above, p. 35, *supra*, it has been consistently held that, in granting pensions or other forms of gratuitous benefits, Congress may impose such reasonable terms and conditions as it sees fit.[26]

The broad discretion possessed by Congress with regard to the conditions imposed on receipt of veterans' benefits is illustrated by the cases involving the statutory limitation on the fees of attorneys representing veterans on administrative claims. *Hines* v. *Lowrey*, 305 U.S. 85; see also, *Calhoun* v. *Massie*, 253 U.S. 170; *Margolin* v. *United States*, 269 U.S. 93. In *Hines*, for example, the statutory limitation on fees

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[25] See the preface to Title 38, United States Code Annotated, Brief History of Legislation Pertaining to Veterans' Benefits.

[26] Insofar as federal pensions are concerned, this was conceded by the court below (R 45).

amounted to ten dollars. An attorney, representing an incompetent veteran before the agency, was awarded a fee of $3,000 by a New York court, which had jurisdiction over the incompetent. The attorney, noting that the New York court had deemed this fee to be commensurate with the nature and extent of his services, urged that the state court had the paramount power to fix fees for services rendered an incompetent. This Court rejected the attorney's contentions, holding that "Congress alone is vested with constitutional power to determine the wisdom of [its] policy" with regard to conditions imposed on veterans' benefits (305 U.S. at 90), and that the valid exercise of its power was supreme over any power residing in the state court. *Id.* at 91.[37]

(*b*). In 38 U.S.C. 17–17j, Congress has provided for Post Fund expenditures, not by basing its legislation on the general relationship between the government and its residents or citizens (the relationship which underlies the state's escheat power), but rather by relying on this special relationship between the government and veterans in need of gratuitous medical care and treatment. The statute reflects the Congressional judgment that, in circumstances where a veteran patient dies leaving neither heirs nor testamentary beneficiaries, his property should be

[37] See also, *Gostovich* v. *Valore*, 153 F. Supp. 826 (W.D. Pa.), appeal dismissed, 355 U.S. 608, affirmed, 257 F. 2d 144 (C.A. 3), certiorari denied, 359 U.S. 916, where the veteran's constitutional attack, based on his contention that the ten dollar limitation in effect deprived him of the right to counsel, was rejected by the courts which deferred to the legislative judgment in this area.

devoted to providing additional comforts to other hospitalized veterans. In effect, the government has established a form of assistance for these veterans as a class—through the Post Fund—by requiring a minimal repayment (in specified circumstances) in return for its extension of gratuitous care and treatment to such veterans as a class.[28]

The reasonableness of this means of furthering the welfare of this class of veterans seems plain. On the one hand, nothing is taken from the veteran himself, no matter how long his period of hospitalization may be. Nor is anything taken from his family or from the natural objects of his testamentary bounty. On the other hand, the veteran who dies in a Veterans Administration facility has had the benefit of the activities and equipment financed by the General Post Fund—in Warpouske's case for a total of seven years. It is altogether fair that, in the absence of heirs or devisees, his estate should be utilized to give other similarly situated veterans the same benefit. And it is of some relevance that only infrequently will the estate of any particular veteran subject to the vesting provisions be substantial. As Congress was un-

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[28] The self-executing method of 38 U.S.C. 17-17j dates back to the establishment in 1851 of military asylums for the relief and support of invalid and disabled soldiers of the Army of the United States. 9 Stat. 595. That Act provided that the support of such institutions should be provided, in part, by appropriating:

"all moneys belonging to the estates of deceased soldiers, which now are, or may hereafter be unclaimed for the period of three years, subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased. * * *"

questionably aware, most patients in V.A. institutions are being treated for non-service-connected illnesses or disabilities and were therefore admitted only because of an inability to bear the costs of their medical care.[29]

The reasonableness of the Congressional plan reflected in 38 U.S.C. 17–17j is brought into still sharper focus by the fact that Congress could undeniably provide, with respect to competent and incompetent veterans alike, that the value of care and treatment by the Veterans Administration should be chargeable against the veteran's estate in all circumstances. This, indeed, is what the State of Oregon, in common with most other states, does with regard to its public hospitals and homes.[30] In the case of most veterans

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[29] See, *e.g.*, Annual Report of the Administrator of Veterans' Affairs, 1938, p. 10. It shows that since 1924 about 73% of all admissions were of the non-service-connected variety and that, in 1938, 91% of the admissions were non-service-connected disabilities. This latter figure reached 92% in 1939 and 1940. Annual Report, 1939, p. 8; 1940, p. 8.

[30] See Oregon Revised Statutes, §§ 413.200, 411.480, 428.010-(3). Exemption from the state claim is minimal since Oregon's exemption laws relate to a very limited class of property. See § 23.160 *et. seq.*

Moreover, it is interesting to note that Oregon was fully compensated for the two months Warpouske spent in the Multnomah County Hospital prior to being transferred to the Veterans Hospital (R. 6). Payment to creditors, like the state here, is provided for under 38 U.S.C. 17c, *supra*, pp. 5–6. Thus, where there are no devisees or heirs, any claim of the state for reimbursement of hospital expenses takes precedence over the claim of the General Post Fund—irrespective of the comparative duration of the veteran's confinement in state and Veterans Administration hospitals. Had the estate here been smaller, the payment to the county hospital might well have

(including Warpouske), such a provision would reduce or eliminate the possibility of inheritance by surviving relatives and even bar the possibility of an escheat. We stress again that 38 U.S.C. 17–17j manifests the Congressional intention that neither the veteran, during his lifetime, nor his survivors or devisees, upon his death, be taxed with the cost of his hospitalization and that, where there are no heirs and no testamentary disposition, other veterans in federal hospitals and homes (rather than the public treasury) will obtain the veteran's estate. Cf *National Home* v. *Wood*, 299 U.S. 211, 215. Surely, Congress' authority is not lessened because it chose to be more generous to veterans and their families than it might have been. Cf. *Ferry* v. *Ramsey*, 277 U.S. 88.[31]

(*c*). It is no answer that there may be other methods Congress might employ, either through taxing or

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exhausted its assets, and notwithstanding Warpouske's seven years in V.A. institutions the Post Fund would have received nothing.

[31] The fact that 38 U.S.C. 17–17j is the most generous disposition from the veterans' viewpoint—since it (1) does not take anything from the veteran-patient during his life and does not interfere with his control of his estate by devise or intestate succession, (2) does not affect the full taking by any heirs or devisees, and (3) disposes of the estate left (where there is no will or heir) for the sole use and benefit of other veterans—refutes the observation of the court below that the self-executing interpretation we advocate is "basically contrary to the traditional solicitude of the Government for its disabled war veterans" (R. 44). It is not the veteran who has any complaint under this statute, it is only the state; the Oregon court's concern would have been more fairly directed to the merits of the competing claims of the two governments.

asserting claims against estates,[32] to provide monies for the Post Fund. In one view, of course, the measure used here by Congress is a form of tax—restricted, out of considerations of fairness and equity, to those estates of veteran-patients dying intestate and without heirs. The significant point, in any event, is that other methods of raising funds for the Post Fund would in all probability have in the end an effect on state treasuries comparable, in cases like this, to that of 38 U.S.C. 17–17j.

Moreover, the choice of means, as long as those selected are reasonably related or necessary and appropriate to the permitted end, clearly lies with Congress. Its decision that the vesting provisions of 38 U.S.C. 17–17j were fair and reasonable in the circumstances is entitled to the greatest weight. This Court has often reiterated that a court should not substitute its judgment for that of Congress as to the means necessary and appropriate to a permitted end, but should rather defer to the legislative judgment. *E.g., Perez* v. *Brownell*, 356 U.S. 44; *Oklahoma* v. *Civil Service Comm'n*, 330 U.S. 127; *United States* v. *Darby*, 312 U. S. 100; *Northern Securities Co.* v. *United States*,

[32] Part of the framework of 38 U.S.C. 17–17j might conceivably have been used—that is, honoring of all heirs and beneficiaries and asserting only a claim for the cost of care and treatment after the heirs or beneficiaries take. However, as suggested by the method adopted by Oregon and most other states with regard to their public institutions, the cost of keeping records of expenditures for care and treatment would far exceed the possibility of recoupment after takings by heirs and beneficiaries, and hence, as a practical matter, it would only be worth while to keep records for the purpose of asserting a claim prior to the taking.

193 U.S. 197.[33] As cogently put by Chief Justice Marshall, the courts should not "deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances." *McCulloch, supra,* at 415–416.

(*d*). It is also significant, we think, that the same method, or methods closely akin to that established in the federal Act, have been employed by a number of states maintaining old soldiers' homes for veterans.[34] While the vesting language varies from one state to another—together with differences in grants of capacity to leave by will or intestate succession, and the type of estate covered by the statute—the self-executing feature is always present. California,[35] covering only the personalty or money held by or left in the custody of the home, provides that upon death of the veteran his personalty left "shall * * * be held as a trust fund" for eligible heirs, and if unclaimed, "shall be paid to the post fund of the home * * *". Illinois,[36] also covering only personalty or money in the custody of the home, provides that, upon the death

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[33] See, also, *First National Bank* v. *Union Trust Co.*, 244 U.S. 416; *Fairbank* v. *United States*, 181 U.S. 283; *Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447; *Logan* v. *United States*, 144 U.S. 263.

[34] A survey of state legislation reveals that at least the following have self-executing provisions similar to 38 U.S.C. 17–17j: California, Colorado, Idaho, Illinois, Massachusetts, North Dakota, Rhode Island, and Wisconsin.

[35] West's Ann. Calif. Codes, Military and Veterans, §§ 1035, 1035.1 (1960 Supp.). The California law, more restrictive than 38 U.S.C. 17–17j, does not permit the veteran full power to leave to anyone by will after his entry into the home.

[36] Smith-Hurd Ill. Ann. Stat., Vol. 23, §§ 3021, 3022 (1958).

of the veteran, such funds may be "expended" for the "special comfort, pleasure and amusement" of the soldiers and sailors left in the home. Among the other states, Colorado [37] covers all property "real, personal, or mixed" whether in the custody of the home or not, providing that it "shall pass" for the use and benefit of the home; Massachusetts [38] establishes that on death a veteran-member's estate "shall inure" to the home; Idaho,[39] like the federal Act, simply provides for vesting; Wisconsin,[40] covering personal property, uses the term "shall be distributed" for the benefit of the home.[41]

These states have thus singled out veterans receiving care and medical treatment in a state institution established solely for their benefit for special treatment, in that these veterans' estates are left, in the prescribed circumstances, for the sole use and benefit of the other veterans remaining in the soldiers' home. The escheat provisions which apply to citizens generally, on the other hand, redound to the benefit of the state treasury, usually for the advantage of the school

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[37] Colorado Rev. Stats. Ann., § 143–1–14 (1957 Supp.).

[38] Ann. Laws of Mass., c. 190, § 3(7) (1959 Supp.).

[39] Idaho Code Ann., Vol. 11, § 66–906 (1949).

[40] West's Wisconsin Stats. Ann., § 45.37(10) (1959 Supp.). The Wisconsin statute permits the veteran to leave the property only to legal dependents, and no will, drawn prior or subsequent to entry into the home, making a contrary disposal, is recognized as valid.

[41] The North Dakota statute (North Dak. Century Code Ann., § 37–15–17 (1960)) covers personal property in excess of $300; the Rhode Island statute (General Laws of Rhode Island, Vol. 5, § 30–24–9 (1956)) provides that all property of the deceased inmate shall "become" the property of the state for the use of the home.

fund. This special treatment by the states of such veterans is essentially founded on the same recognition of the ward status of these veterans as underlies the treatment under 38 U.S.C. 17–17j of veterans in federal institutions. By enacting such exceptions to their own escheat legislation, these states have indicated their belief that the method provided by those special laws is a fair and reasonable way of providing assistance to other veterans in these public institutions. Congress shares this belief.

4. In any conflict between the Oregon escheat law and the federal vesting statute, the state law must give way under the Supremacy Clause. Since, as we have seen, 38 U.S.C. 17–17j is based upon the special relationship between the hospitalized veteran and the government, it cannot be deemed an escheat statute. As the Supreme Court of North Dakota held in applying 38 U.S.C. 17–17j to the estate of an incompetent admittee, like Warpouske, in *In re Gonsky's Estate, supra,* 79 N.D. at 131, "[t]he rights of the United States * * * do not arise because the property escheats to the United States. No question of escheat is involved. Such rights arise not by escheat but by virtue of the relations created under the terms of the statute."

No matter how the statute is characterized, however, as long as it is a necessary and appropriate exercise of the authority granted Congress under the defense and military powers (as we have shown it to be), it is

clearly supreme under the Constitution.[42] It is no objection that the exercise of the federal power encroaches on a state power or is attended by the same incidents attending the exercise of a state power. *E.g., United States* v. *Darby*, 312 U.S. 100, 114; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 147; *Kentucky Whip & Collar Co.* v. *I.C.R. Co.*, 299 U.S. 334, 346–347. This Court, in *Case* v. *Bowles supra*, declared the principle in unequivocal fashion in terms fully applicable here (327 U.S. at 102–103):

> Where, as here, Congress has enacted legislation authorized by its granted powers, and

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[42] *United States* v. *Burnison*, 339 U.S. 87, and *United States* v. *Fox*, 94 U.S. 315, the latter relied on by the court below, do not support the view that 38 U.S.C. 17–17j, as interpreted by the government, violates the Tenth Amendment. In *Burnison*, a state statute prohibited testamentary gifts of personalty to the United States; in *Fox*, the same was true of devises of real property. In each decision, the Court declared, in view of these statutes, that the attempt by a citizen of the state to leave property to the United States was invalid since the state law was controlling.

These decisions are clearly distinguishable. In the first place they both concern the state's power over the testamentary devolution of property by its citizens, not the right of the state to escheat. More important is the fact that neither *Burnison* nor *Fox* involved any federal legislation of any kind and thus did not present the Tenth Amendment issue posed here. The Court in those cases was merely holding that the state ordinarily has the power to control the testamentary disposition of its citizens, not that the state's power would be supreme over a federal act, such as 38 U.S.C. 17–17j, under which in extremely limited situations the estate of a veteran who has received gratuitous hospital care vests in the United States for the benefit of other hospitalized veterans.

Mager v. *Grima*, 8 How. 490; *Pennoyer* v. *Neff*, 95 U.S. 714; and *United States* v. *Perkins*, 163 U.S. 625, also relied on by the court below, are similarly inapposite.

where at the same time, a State has a conflicting law which but for the congressional Act would be valid, the Constitution marks the course for courts to follow. Article VI provides that "the Constitution and the Laws of the United States * * * made in pursuance thereof * * *. shall be the supreme law of the land * * *".

B. THE FIFTH AMENDMENT

The Oregon Supreme Court also expressed concern that 38 U.S.C. 17–17j, if self-executing, would violate the Fifth Amendment. As in the case of the Tenth Amendment, there is no justification for this concern.

1. We do not understand the Oregon court's interest in a possible violation of the Fifth Amendment to involve any right of the state. Nowhere in its opinion is there any suggestion that a state's right of escheat is within the ambit of the Fifth Amendment, and we submit that it obviously is not. At best, it is doubtful that a state can be regarded as a "person" within the meaning of the Fifth Amendment. Cf. *United States* v. *Burnison*, 339 U.S. 87, 95. In any event, since an individual's right of succession to property is not protected by any provision in the Constitution (*Irving Trust Co.* v. *Day*, 314 U.S. 556, 562), it would appear to follow *a fortiori* that a state's right of escheat is not guaranteed by the Fifth Amendment.

2. a. Nor does 38 U.S.C. 17–17j, if applied in accordance with its plain terms, interfere in any way with the veteran's rights under the Fifth Amendment. We emphasize again that the operative pro-

visions of the statute do not come into play unless and until the veteran dies, while receiving care and treatment, without having made a testamentary disposition of his property and without leaving relatives entitled to inherit under the state law of intestate succession. In those circumstances, the veteran's property rights no longer exist, and the sole alternative to the vesting of his personalty in the United States is an escheat to the state. Consequently, with regard to the veteran, 38 U.S.C. 17–17j works no deprivation of property within the meaning of the Fifth Amendment.

b. Even assuming such a deprivation *arguendo*, the Oregon court's belief that there would be a violation of the incompetent veteran's Fifth Amendment rights is plainly erroneous. For the reasons we have given, *supra*, pp. 37–46, the Congressional choice to use the unclaimed personalty for the benefit of the Post Fund is undoubtedly reasonable, particularly in the light of the benefits accorded the veteran by free hospitalization and care. The federal statute would no more violate the Due Process Clause than do the comparable state statutes we have discussed above (*supra*, pp. 28, 44–45), or state legislation providing for the escheat of property left by intestate residents leaving no heirs.

The contrary view of the Oregon court was based on its assumption that 38 U.S.C. 17–17j requires actual capacity to contract on the part of the admittee to a V.A. institution. On that premise, the court was of the view that the necessary contract could not constitutionally be supplied, in the case of an in-

competent lacking such capacity, by the conclusive presumption provision of 38 U.S.C. 17a, *supra*, pp. 4–5. Hence, the court concluded that Congress did not intend this provision to apply except in the case of a competent admittee (R. 38–44). Since this view stems directly from the court's misapprehension of the meaning of 38 U.S.C. 17–17j, it must fall with the court's erroneous interpretation of the statute. As we have discussed at length, *supra*, pp. 18–33, the statute does not require any actual contract; rather, it provides for the vesting of the property in the United States for the benefit of the Post Fund. The "conclusive presumption" provision does no more than declare and embody the self-executing feature of the statute. It does not, as the court below believed, presume a need for capacity to contract on the part of the admitted veteran. Consequently, application of the "conclusive presumption" provision, amounting to no more than a restatement of the earlier vesting provision, involves no Fifth Amendment problem.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

ARCHIBALD COX,
Solicitor General.
WILLIAM H. ORRICK, JR.,
Assistant Attorney General.
ALAN S. ROSENTHAL,
HERBERT E. MORRIS,
Attorneys.

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In the Supreme Court of the United States

OCTOBER TERM 1960

No. 329

THE UNITED STATES OF AMERICA, as Trustee for the sole use and benefit of the General Post Fund, Petitioner,

v.

THE STATE OF OREGON, acting by and through the State Land Board, Respondent

In the Matter of the Estate of Adam B. Warpouske, Deceased; Portland Trust and Savings Bank, Administrator of the Estate of Adam B. Warpouske, Deceased.

On Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT STATE OF OREGON acting by and through the State Land Board

ROBERT Y. THORNTON
Attorney General

CATHERINE ZORN
Assistant Attorney General
Supreme Court Building
Salem, Oregon

Attorneys for State of Oregon, acting by and through the State Land Board

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On Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT STATE OF OREGON acting by and through the State Land Board

QUESTIONS PRESENTED

The essence of the questions presented in this case is simply this:

Are the provisions of 38 U.S.C. (1952 Ed.) 17-17j founded upon contract or are they self-executing, serving automatically to vest in the United States the personal property of a veteran dying intestate and without heirs in a Veterans' facility?

STATEMENT

The facts of this case are unique and marked by a series of unusual circumstances.

Warpouske was a veteran of World War I and lived in a rooming house in Portland, Oregon. On December 31, 1955, he suffered a hip fracture and a cerebral hemorrhage rendering him unconscious (R. 6, 31). He was taken to a hospital and, five days later, when it appeared that he was without funds, he was transferred to the Multnomah County hospital in Portland for treatment at county expense (R. 7-35). He remained there until March 1, 1956, when he was transferred to the Veterans' Administration hospital in Portland where he died on March 19, 1956, intestate and without heirs (R. 7, 31). From the time he was stricken until his death he was unconscious or at best semi-conscious (R. 31, 36). The Veterans' Administration records show that upon his admission he was very weak, disoriented and unable to speak, and that there was no improvement or clearing of his sensorium (R. 79).

Shortly after his removal to the Veterans' hospital, and a few days before he died, it was learned that he had fallen heir to the estate of his deceased brother in Wisconsin, having a net value of approximately $12,755.67 (R. 4, 28). He was never aware of his inheritance. On March 9, 1956, the Portland Trust and Savings Bank was appointed guardian of Warpouske's estate to receive this inheritance (R. 12). No guardian of Warpouske's person was ever appointed. No commit-

ment order of a court provided for his transfer or confinement to the Veterans' hospital.

In addition to his mental condition ranging between being comatose or semi-comatose from the time he suffered the stroke until his death, the Veterans' Administration files show that Warpouske had a long history of mental illness and mental deficiency. His mental condition was diagnosed as dementia praecox. Other Veterans' Administration reports classified him as a moron, psychotic or insane (R. 55-80).

When Warpouske died the Veterans' Administration claimed his estate under the provisions of 38 U.S.C. (1952 Ed.) 17-17j, by reason of the fact that he died in a veterans' facility, intestate and without heirs. On the other hand, the State of Oregon claimed his estate on the ground that 38 U.S.C. 17-17j was based upon contract, that Warpouske was mentally incompetent to contract, that no valid contract arose and that therefore his estate escheated to the State of Oregon under the provisions of Oregon Revised Statutes 120.010[1] for the benefit of the Common School Fund (R. 11-12).

Part of the assets in Warpouske's estate consisted of his unexpended federal pension funds in a net amount of $971.47 (R. 28). No contest existed as to these funds inasmuch as the state, upon learning of their source, immediately relinquished all claim to them, recognizing that they were subject to reversion to the federal government under the provisions of 38 U.S.C. (1952 Ed.) § 450[2], and that their reversion was not a matter of contract